

Message Text

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ACTION EA-12

INFO OCT-01 IO-14 ISO-00 SNM-05 L-03 CA-01 PPTE-00
SCS-06 DEAE-00 /042 W
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R 140219Z JUL 78
FM AMEMBASSY WELLINGTON
TO SECSTATE WASHDC 5892
INFO AMEMBASSY CANBERRA
AMEMBASSY MANILA
USMISSION GENEVA

UNCLAS SECTION 01 OF 02 WELLINGTON 03644

MANILA FOR DEA

EO 11652: N/A
TAGS: SNAR, NZ
SUBJECT: NEW ZEALAND NARCOTICS LAWS: MISUSE OF DRUGS
- ACT 1975

REF: STATE 170187

1. FOLLOWING REPLY IS KEYED TO QUESTIONS IN REFTEL.
2. POSSESSION: (A) YES.
ALL FORMS OF CANNABIS - MAX 3 MONTHS A/O DOLS 500 FINE.
COCAINE - MAX 3 MONTHS A/O DOLS 500 FINE.
HEROIN - MAX 6 MONTHS A/O DOLS 1000 FINE.
OTHER - ALL CONTROLLED SUBSTANCES ARE CLASSIFIED
- UNDER "A," "B," OR "C" SCHEDULES. POSSESSION OF
- CLASS "A" CONTROLLED DRUGS CARRIES PENALTY OF MAX
- 6 MONTHS A/O DOLS 1000 FINE. PENALTY FOR POSSESSION
- OF CLASSES "B" AND "C" DRUGS IS 3 MONTHS A/O DOLS
- 500 FINE. (COPY OF SCHEDULES WILL BE FORWARDED TO
- S/NM BY DS-4.)

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(B) UNTIL CONTRARY IS PROVED, PERSON IS DEEMED TO BE IN
POSSESSION FOR PURPOSES OF SUPPLYING, DEALING OR SELLING,
IF HE IS IN POSSESSION OF ANY OF FOLLOWING:

- 1) 5 GRAMS OR MORE MORPHINE;
- 2) HALF GRAM OR MORE COCAINE OR HEROIN;
- 3) TWO AND ONE-HALF MILLIGRAMS OR MORE LYSERGIDE;

- 4) 250 MILLIGRAMS OR MORE TETRAHYDRO-CANNABINOL;
 - 5) 5 GRAMS OR MORE CANNABIS OR 100 OR MORE CIGARETTES
- CONTAINING CANNABIS;
 - 6) 56 GRAMS OR MORE OF ANY OTHER CONTROLLED DRUG.
- (C) PENALTIES FOR MERE POSSESSION ARE LESS SEVERE THAN FOR OTHER NARCOTICS OFFENSES. MAXIMUMS ARE DEFINED IN LAW BUT LESSER PENALTIES ARE WITHIN DISCRETION OF JUDICIARY. NORMAL PENALTY IN RECENT MONTHS FOR MERE POSSESSION OF CANNABIS HAS BEEN 100 DOLLS FINE AND NO IMPRISONMENT; FOR HEROIN, 250 DOLS FINE AND ONE-TWO YEARS PROBATION.

3. TRAFFICKING:

(A) THREE SEPARATE TRAFFICKING OFFENSES:
TRAFFICKING IN CLASS "A" DRUGS IS PUNISHABLE BY
MAX 14 YEARS IMPRISONMENT IF TRIED IN SUPREME COURT AND
3 YEARS A/O DOLS 3000 FINE IF TRIED IN MAGISTRATES COURT;
TRAFFICKING IN CLASS "B" DRUGS IS PUNISHABLE BY
MAX 10 YEARS IMPRISONMENT IF TRIED IN SUPREME COURT AND
2 YEARS A/O DOLS 2000 FINE IN MAGISTRATES COURT;
ALL OTHER CONTROLLED DRUGS TRAFFICKING PUNISHABLE BY
MAX 8 YEARS IN SUPREME COURT OR 1 YEAR A/O DOLS 1000 FINE
IN MAGISTRATES COURT.

(B) MAXIMUM PENALTIES SET FORTH IN (A); THERE ARE NO
MINIMUMS, NO MANDATORIES, AND NO SPECIAL LIBERTY PRO-
VISIONS. (COMMENT: DEPARTMENT WILL NOTE CONSIDERABLE
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DIFFERENCES IN MAXIMUM PENALTIES OBTAINABLE IN SUPREME
AND MAGISTRATES COURTS. UNDER SUMMARY PROCEEDINGS
ACT 1957, THE ARRESTING AUTHORITY CAN ELECT TO TAKE THE
ARRESTED PERSON BEFORE A MAGISTRATE FOR A SUMMARY TRIAL.
WHERE A PERSON IS SUMMARILY CONVICTED UNDER THE ACT, THE
LESSER MAXIMUMS APPLY. SUPREME COURT, WHERE THE
OFFENDERS MUST BE FORMALLY INDICTED, IS NORMALLY RE-
SERVED FOR THE MORE SERIOUS OFFENSES AND MORE IMPORTANT
OFFENDERS. END COMMENT.)

(C) AMOUNT IS SUFFICIENT TO CONSTITUTE TRAFFICKING, UNTIL
DEFENDENT PROVES CONTRARY. WHERE AMOUNT IS SUFFICIENT
TO CONSTITUTE TRAFFICKING, INTENT IS ASSUMED. ASSOCI-
ATION WITH TRAFFICKERS OR PRODUCERS IS NOT AN OFFENSE
(SEE FOLLOWING CONSPIRACY SECTION).

(D) SECTION 310 OF NZ CRIMES ACT 1961 MAKES IT AN
OFFENSE TO CONSPIRE TO COMMIT A CRIMINAL ACT. PENALTY
FOR CONSPIRACY IS THAT FOR WHICH A PERSON WOULD BE
ELIGIBLE IF HE/SHE HAD IN FACT COMMITTED THE OFFENSE
ITSELF.

4. CULTIVATION, PRODUCTION, ELABORATION:

(A) NZ LAW DEFINES "PROHIBITED PLANT" AS:

- 1) ANY PLANT OF GENUS "CANNABIS";
- 2) "ERYTHROXYLON COCA" AND "ERYTHROXYLON NOVA GRANATENSE"
- AND EVERY OTHER SPECIES OF THE GENUS "ERYTHROXYLON"
- FROM WHICH A CONTROLLED DRUG CAN BE PRODUCED;
- 3) ANY PLANT OF SPECIES "PAPAVR SOMNIFERUM";
- 4) ANY PLANT OF SPECIES "LOPHOPHORA WILLIAMSII" OR
- "LOPHOPHORA LEWINII";
- 5) ANY PLANT OF SPECIES "PSILOCYBE MEXICANA" OR
- "PSILOCYBE CUBENSIS";

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- 6) ANY OTHER PLANT DECLARED BY REGULATION TO BE
- PROHIBITED.

PENALTIES FOR VIOLATIONS ARE:

- 1) CONVICTION IN SUPREME COURT - MAX. OF 7 YEARS;
- 2) SUMMARY CONVICTION IN MAGISTRATES COURT, MAX. OF 2 YEAR
- IMPRISONMENT A/O DOLS 2000 FINE.

(B) CULTIVATION, PRODUCTION, SALE, DISTRIBUTION OF
"PROHIBITED PLANTS" OR "CONTROLLED DRUGS" ARE ALL

ILLEGAL.

(C) ELABORATION: DERIVATIVES OF CONTROLLED DRUGS ARE TREATED IDENTICALLY UNDER THE LAW AS THE CONTROLLED DRUGS THEMSELVES.

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5. FINANCIAL: FINANCING OF NARCOTICS OFFENSES IS PUNISHABLE UNDER SECTION 66 OF NZ CRIMES ACT. THERE IS ADDITIONAL CONCERN FOR TIGHTENING THIS ASPECT OF THE NARCOTICS LEGISLATION, AND IT MAY BE ADDRESSED IN NEW NARCOTICS LEGISLATION CURRENTLY BEING FORMULATED (SEE PARA 8).

UNDER NZ REGULATIONS, ANY MONETARY REMITTANCES OF ANY KIND OR SIZE FROM NEW ZEALAND REQUIRES CONSENT OF THE N.Z. RESERVE BANK. THERE ARE NO REQUIREMENTS FOR DISCLOSURE OF FOREIGN BANK ACCOUNTS (COMMENT: GNZ IS AWARE THAT SEVERAL MILLIONS OF DOLLARS EARNED IN NARCOTICS ESCAPE NZ ANNUALLY.)

6. CRIMINAL PROCEDURE:

(A) ARRESTED PERSON CAN BE REMANDED BY MAGISTRATE FOR SHORT PERIOD (FEW DAYS) PENDING FURTHER INVESTIGATION. CONSULAR OFFICER WOULD BE NOTIFIED OF ARREST AND CONSULAR ACCESS PERMITTED.

(B) PRE-TRIAL DETENTION: ONE WEEK TO FOUR MONTHS.

(C) AVERAGE LENGTH OF TRIAL PROCESS: ONE-TWO MONTHS.

TRIAL: ONE-THREE DAYS.

REVIEW PROCEEDING: NONE.

APPELLATE PROCESS: DEPENDS ON COMPLEXITY OF THE CASE

- AND WISHES OF SOLICITORS. NO CURRENT APPEALS COURT
- BACKLOG.

(D) LEGAL AID IS AVAILABLE TO INDIGENT DEFENDENT.

(E) FOR PENALTIES OF LESS THAN FIVE YEARS, 25-33 PERCENT REMISSION FOR EXEMPLARY CONDUCT. PENALTIES IN EXCESS
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OF FIVE YEARS, GENERAL RULE IS 25-50 PERCENT REMISSION FOR EXEMPLARY CONDUCT. APPEARANCE BEFORE PAROLE BOARD REQUIRED.

(F) NO. FOREIGN OFFENDERS ARE TREATED EQUITABLY WITH NZ CITIZEN OFFENDERS. MORE IMPORTANT FOREIGN OFFENDERS WOULD NORMALLY BE DEPORTED UPON COMPLETION OF THEIR PENALTY.

7. MISUSE OF DRUGS ACT 1975 (ENTERED INTO FORCE JUNE 1, 1977) IS THE BASIC NZ NARCOTICS LAW. COPY BY DS-4 TO S/NM.

8. NZ CABINET COMMITTEE IS CURRENTLY WRITING NEW DRUG LAWS WHICH ARE EXPECTED TO BE TIGHTER AND TOUGHER IN STYLE AS WELL AS SEVERITY OF PENALTIES. LAWS WOULD BE HARMONIZED WITH AUSTRALIAN LEGISLATION IN ORDER TO INHIBIT DRUG TRAFFICKERS FROM TAKING ADVANTAGE OF LIGHTER PENALTIES IN ONE OR THE OTHER OF THE TWO COUNTRIES. (GNZ UNDERSTANDS GOA PROPOSES TO TOUGHEN ITS NARCOTICS LEGISLATION AS WELL.) OF SIGNIFICANCE IN CURRENT CABINET COMMITTEE DELIBERATIONS IS QUESTION OF GIVING THE POLICE POWERS TO USE LISTENING DEVICES TO COPE WITH DRUG DEALERS. THIS WILL BE A VERY CONTROVERSIAL ISSUE IF GOVERNMENT FINALLY DECIDES TO REQUEST IT.
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